

1 No, I did not.

2 Q Did you look at any list of
3 systems like Mr. Orszag's list that showed
4 that CSNMA was being carried on that system?

5 A No, I did not.

6 Q So, it's false that you actually
7 looked at CSNMA carriage before deciding what
8 to put on Schedule A. Correct?

9 A I gave Jen Gaiski -- may I answer
10 with more than a yes or no here?

11 JUDGE SIPPEL: Well -

12 THE WITNESS: I gave Jen -

13 JUDGE SIPPEL: If you're looking
14 for a yes or no out of that answer?

15 MR. FREDERICK: Yes.

16 JUDGE SIPPEL: Well, you're not
17 going to get that.

18 THE WITNESS: No, I gave -- let
19 me -

20 JUDGE SIPPEL: You have to
21 rephrase the question. I mean, that's like I
22 could be home today or tomorrow.

1 (Laughter.)

2 JUDGE SIPPEL: Let's go. Let him
3 explain as best he can. Now, you can get back
4 to your style. I'm not criticizing you, but
5 let's give him a little bit of leeway here.

6 THE WITNESS: The corporate team
7 and I have access to the same tools of
8 information, list of systems, subscribers,
9 bandwidth, et cetera, what the history of
10 carriage of different networks was. So, if I
11 lay out the criteria, they have the ability to
12 pull those lists and look at it, and sync up
13 my criteria with what ultimately became the
14 list.

15 JUDGE SIPPEL: And was your
16 criteria the three you mentioned -- you gave
17 three criteria at the outset.

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: Those three
20 criteria?

21 THE WITNESS: My goal is to limit
22 costs, so I can limit the distribution

1 commitment to as small an area as possible.

2 Rule number one.

3 JUDGE SIPPEL: Yes. Rule number
4 one.

5 THE WITNESS: Recent history of
6 Orioles.

7 JUDGE SIPPEL: Recent history of
8 Orioles. Yes, okay.

9 THE WITNESS: If they didn't have
10 the Orioles recently, don't make an obligation
11 now. Number two was bandwidth.

12 JUDGE SIPPEL: Had to be a minimum
13 of 550. Right?

14 THE WITNESS: Correct. And the
15 third was to be as geographically confined as
16 possible. If I had my druthers, it would have
17 been the Baltimore-Washington markets only.
18 If we had to expand beyond that, so be it.
19 The rest would be a hunting license.

20 JUDGE SIPPEL: Proximity to D.C.
21 and/or Baltimore. Is that the idea?

22 THE WITNESS: That's the idea.

1 Baltimore-Washington only would have been my
2 cost-containment preference. But if, to get
3 the deal done, they had to expand it beyond
4 that, so be it.

5 BY MR. FREDERICK:

6 Q Mr. Ortman -

7 A Yes.

8 Q -- did you canvass the Caswell-
9 Yanceyville system to determine whether or not
10 it was carrying CSNMA in July 2006?

11 A Specifically, that one lineup, I
12 don't recall.

13 Q Did you canvass the Stewart
14 Comcast system in July of 2006 to determine
15 whether it was carrying CSNMA?

16 A I don't recall canvassing any one
17 lineup.

18 Q Is it your testimony today that
19 you did not go to each specific system to
20 determine whether or not they were carrying
21 CSNMA in July of 2006?

22 A I would not have needed to,

1 because the corporate team had access to the
2 same tool I did. So, no, I did not canvass
3 that list in that fashion that you're asking.

4 Q Okay. Did you look at any
5 specific system to determine whether or not
6 there was a legacy of carriage for CSNMA?

7 A I gave the guidance to Jen, and
8 she pulled the list.

9 Q And that list -- is it your
10 testimony that list is contained on a computer
11 system within Comcast corporate?

12 A Yes.

13 Q So, is it your testimony that you
14 did not prepare the actual list of systems on
15 Schedule A?

16 A No, I reviewed Schedule A after
17 they met my criteria to see if it was
18 accurate.

19 Q And when you reviewed Schedule A,
20 did you look to see whether systems that
21 carried CSNMA had been left off the list?

22 A As long as I have a hunting

1 license, I didn't care, so I didn't look that
2 carefully at that particular point.

3 Q Mr. Ortman, that's not my
4 question, sir. My question is, when you got
5 the list of Schedule A -

6 A Right.

7 Q -- did you look to see whether
8 there were systems that were carrying CSNMA
9 that had been left off the list. Yes or no?

10 A No.

11 Q Mr. Ortman, one determination of
12 legacy carriage would be whether local
13 broadcast stations were carrying the Orioles.
14 Correct?

15 A That would have been one.

16 Q Okay. And I believe today you
17 changed your testimony regarding over-the-air
18 broadcasts of Orioles games in Harrisburg.
19 Correct?

20 A There have been some. That's
21 correct.

22 Q Okay. Is it true that WLYH was

1 the station in Harrisburg that was
2 broadcasting Orioles games on over-the-air
3 television?

4 A I don't know that. My testimony
5 had to do with Fox 43 back when I was
6 distributing the games in the `90s, not the
7 more recent carriage on broadcast TV.

8 Q Okay. So, at least back into that
9 15-year ago period, there was an over-the-air
10 station in Harrisburg carrying Orioles games.

11 A Correct.

12 Q Just for the record, it will help
13 if I can finish, and then you can answer, even
14 when you're agreeing with me, which I
15 appreciate your agreeing with me, sir.

16 A Yes.

17 JUDGE SIPPEL: Okay.

18 THE WITNESS: Yes.

19 MR. FREDERICK: Thank you.

20 BY MR. FREDERICK:

21 Q Your testimony is that the Orioles
22 were not carried on over-the-air broadcast

1 stations in the Roanoke-Lynchburg area.

2 Correct?

3 A No. My testimony was that when I
4 was distributing the games on broadcast TV in
5 the '90s, that I had not been very successful
6 in getting many games on there.

7 Q Okay. In July of 2006, did you
8 look at any information to inform yourself
9 about whether the Orioles were being carried
10 on over-the-air broadcast stations in the
11 areas where Comcast was not launching MASN?

12 A No, I didn't, because as long as I
13 had a hunting license, I didn't need to.

14 Q And is the same true for the Tri-
15 Cities area?

16 A It wasn't my jurisdiction, but
17 it's an extension of Roanoke in our mind.

18 Q Did you consult with the head of
19 the division that supervises the Tri-Cities to
20 determine that the application of your
21 criteria was being applied for the Tri-Cities
22 area?

1 A No, I did not.

2 Q Did anyone at Comcast corporate,
3 to your knowledge, consult with the division
4 heads supervising the Tri-Cities to apply the
5 same criteria for the Tri-Cities?

6 A I don't know.

7 Q Is it a fact, sir, that the
8 information on which you used for demand
9 rested principally on your experience with
10 home team sports from the early '90s period?

11 A Principally? No. That, combined
12 with recent history of carriage of the Orioles
13 and the popularity, and recent history of the
14 Orioles. Yes.

15 Q Is it a fact that your knowledge
16 about over-the-air stations dates from your
17 experience at home team sports?

18 A That's fair, yes.

19 Q Okay. Is it fair that in July of
20 2006, you drew upon 15-year old information
21 about over-the-air broadcasts of Orioles
22 games?

1 A That's fair, yes. Among other
2 things, yes.

3 Q Okay. The Roanoke market was new
4 to Comcast in 2006, was it not?

5 A It was.

6 Q And it would have affected your
7 analysis if you had known that the Orioles
8 were broadcast over-the-air in Roanoke-
9 Lynchburg. Correct?

10 A Not really, no.

11 Q Mr. Ortman, in your deposition you
12 were asked the question, "Would it affect your
13 analysis if after '95-96, Orioles were being
14 broadcast over-the-air in those regions?
15 Answer: It would be relevant information for
16 me to look at, yes."

17 A That's a different answer than the
18 answer I just gave you.

19 Q And I'm asking you whether -- how
20 you can reconcile the difference in the answer
21 that you gave at the deposition -

22 A The answer I gave at the

1 deposition -

2 JUDGE SIPPEL: Let him finish the
3 question.

4 THE WITNESS: Sorry.

5 BY MR. FREDERICK:

6 Q I'm just asking you if you could
7 reconcile the differences, because they seem
8 different to me, sir.

9 A The deposition I said, and I
10 repeat now, it's relevant information. Would
11 it have affected my analysis was your question
12 today, and the answer is not really. It's two
13 different questions.

14 Q Would you agree with me that it is
15 impossible to have Nielsen ratings for over-
16 the-air broadcasts if, in fact, that
17 programming is not telecast over-the-air?

18 A It has to be on television in
19 order to get ratings. Yes, that's correct.

20 Q Okay. And would you agree with me
21 that Nielsen separates its ratings for over-
22 the-air broadcasts from cable programming

1 telecasts?

2 A They do distinguish the universe,
3 depending on what report you're looking at.

4 Q Okay.

5 A The rating is always relevant to a
6 particular universe, be it television homes,
7 cable homes, service homes.

8 Q Okay. I want to ask you about
9 bandwidth.

10 A Okay.

11 Q Bandwidth was the second step in
12 your analysis of whether or not a system
13 should be included on the MASN launch list.
14 Correct?

15 A On the obligation, yes, that's
16 correct.

17 Q And anything above a 550 megahertz
18 had sufficient bandwidth to carry MASN.
19 Correct?

20 A Yes.

21 Q There were some 550s that launched
22 MASN. Isn't that correct?

1 A That's correct.

2 Q And those 550s were Comcast
3 systems. Correct?

4 A That's correct.

5 Q Comcast launched a 550 megahertz
6 system in Palmyra, Virginia, did it not?

7 A I don't have a bandwidth chart in
8 front of me, but that may be correct.

9 Q Okay.

10 A I know there were some 550s on the
11 obligation.

12 Q And one of them was Mineral, West
13 Virginia. Correct?

14 A That doesn't sound familiar, but I
15 don't know.

16 Q Okay. What about Hancock,
17 Maryland. There's a 550 system there, and it
18 launched MASN.

19 A That one sounds familiar, yes.

20 Q And a 550 system in Elkton,
21 Maryland.

22 A Yes, that's correct.

1 Q Okay. And is it a fact that
2 Comcast launched MASN on a 450 megahertz
3 system in Petersburg, Virginia?

4 A I don't recall that.

5 Q Is it a fact that Comcast launched
6 MASN on a 330 megahertz system in Westmoreland
7 County, Virginia?

8 A I don't recall that.

9 Q Is it a fact that Comcast launched
10 MASN on a 270 megahertz system in
11 Gordonsville, Virginia?

12 A I don't believe so.

13 Q You don't believe that's a fact?

14 A I don't -- that Comcast launched
15 MASN?

16 Q Yes.

17 A No, I don't believe that's a fact.

18 Q Did Comcast launch MASN in the
19 Gordonsville, Virginia area?

20 A I don't believe so.

21 Q Okay.

22 A In the area, meaning a neighboring

1 system, or on the lineup called Gordonsville?

2 Q On the lineup called Gordonsville.

3 A I don't believe so.

4 Q Mr. Ortman, I'll come back to that
5 in just a second.

6 A Okay.

7 Q Is it a fact that a system at 750
8 megahertz is not a problem for launching MASN?

9 A There would be challenges
10 launching on any system, but it certainly
11 would have the capacity to make room for MASN.
12 That's correct.

13 Q There would not be a bandwidth
14 problem to launch MASN, if the system had 750
15 megahertz. Correct?

16 A Correct.

17 Q And any 550 megahertz system that
18 got upgraded would not be a problem either.
19 Correct?

20 A From a bandwidth standpoint,
21 that's correct.

22 Q Okay. And you were aware in

1 August of 2006 that some of the Roanoke former
2 Adelphia systems had been rebuilt. Correct?

3 A Yes.

4 Q Okay. Those were Adelphia
5 systems.

6 A Yes.

7 Q Those were systems that Comcast
8 was acquiring.

9 A That's correct.

10 Q And that deal closed, if you will,
11 when the FCC approved the acquisition by
12 Comcast of those former Adelphia systems.
13 Correct?

14 A Excuse me. Yes.

15 Q Those Adelphia systems had been
16 rebuilt when Comcast acquired them. Correct?

17 A Some of them had, yes.

18 Q A substantial number of them had
19 been rebuilt. Correct?

20 A I don't have a bandwidth list of
21 systems in front of me, but that's -- yes.
22 Many of them had been, yes.

1 Q The rebuilt Adelphia systems in
2 Roanoke served approximately [REDACTED]
3 subscribers. Correct?

4 A That sounds about right.

5 Q You were asked about that in your
6 deposition, were you not, sir?

7 A Yes. That sounds about right.

8 Q And that's approximately [REDACTED]
9 [REDACTED] of the Comcast subscribers in the
10 Roanoke-Lynchburg DMA. Correct?

11 A That sounds about right, yes.

12 Q So, if Matt Bond, or someone else
13 at Comcast told Messrs. Wyche and Gluck that
14 no former Adelphia systems could be launched
15 in the Roanoke-Lynchburg because of a lack of
16 bandwidth, that would have been wrong.
17 Correct?

18 MR. KIRK: Objection, Your Honor.
19 We haven't established that they said that.

20 MR. FREDERICK: Your Honor, we sat
21 through two days of testimony on what Mr.
22 Wyche and Mr. Gluck were told.

1 MR. KIRK: We haven't sat through
2 testimony of Mr. Bond to determine whether or
3 not he actually heard that.

4 MR. FREDERICK: There's plenty of
5 evidence in the record, Your Honor, from
6 direct testimonies.

7 JUDGE SIPPEL: I'm going to --
8 yes. I'm going to allow the question, but I
9 think you've got to lay a little foundation.
10 Is he aware of what it is that you're going to
11 ask him about. Not that they testified that
12 way, but -- try it another way, just a little
13 bit. But then you can answer the question.

14 MR. FREDERICK: Thank you, Your
15 Honor.

16 BY MR. FREDERICK:

17 Q Are you aware that MASN asserts in
18 this litigation that Comcast has -- strike
19 that.

20 Are you aware that in this
21 litigation MASN's principal negotiators have
22 stated that they were told by Comcast that

1 approximately 150,000 former Adelphia
2 subscribers in Roanoke-Lynchburg could not be
3 launched because of lack of bandwidth?

4 A No. I can -- may I clarify?
5 There is in the agreement a provision carving
6 out 150 -- potential up to 150,000 subscribers
7 that were all Adelphia, former Adelphia, if we
8 needed to delay that launch for up to a year.
9 That's the 150,000 I am familiar with, and
10 they were all former Adelphia systems.

11 Q Are you aware that the MASN
12 representatives said they were told by Comcast
13 that the reason why those Roanoke-Lynchburg
14 could not be launched was for lack of
15 bandwidth?

16 A I'm not aware of that.

17 Q Okay. If that -

18 JUDGE SIPPEL: Well, there's
19 testimony in this case to that effect.

20 THE WITNESS: Okay.

21 JUDGE SIPPEL: So, follow the
22 question. I mean, this is not something that

1 -- this is not being made up out of whole
2 cloth here.

3 THE WITNESS: No, but he's asking
4 if I was aware of that, and the answer is no.

5 JUDGE SIPPEL: No idea.

6 THE WITNESS: I don't know what
7 conversation took place, I was not part of
8 that.

9 JUDGE SIPPEL: So, this business
10 about bandwidth and Adelphia, this is the
11 first you're hearing of it, bandwidth as being
12 an impediment to getting Adelphia.

13 THE WITNESS: Well, two separate
14 questions. The Adelphia systems -

15 JUDGE SIPPEL: Go ahead. I'm
16 sorry.

17 THE WITNESS: The Adelphia systems
18 were not carved out. Many of them were part
19 of the obligation from day one, so I don't
20 understand the connection between bandwidth
21 and Adelphia.

22 JUDGE SIPPEL: Well, wait a

1 minute. You said that they're not carved out,
2 but you just finished saying that there was a
3 footnote or something in the agreement that
4 said 150,000 subscribers -- they may not get
5 it now, but they were going to get it in a
6 year.

7 THE WITNESS: The agreement
8 encompassed a couple of dozen Adelphia
9 systems, among others, some of which launched
10 day one, some of which launched the following
11 spring, and then there was a separate carve-
12 out for a third group, which could launch as
13 early as the spring of '07, but at Comcast's
14 discretion, could be held out until the spring
15 of '08.

16 JUDGE SIPPEL: Did that have
17 anything to do with bandwidth?

18 THE WITNESS: No. They were all
19 in the exhibit; therefore, they passed muster
20 on our bandwidth test.

21 JUDGE SIPPEL: Well, I'll let Mr.
22 -- I'll let -

1 THE WITNESS: They all had to be
2 550 or better in order to be on the exhibit.

3 JUDGE SIPPEL: I'll let Mr.
4 Frederick handle that with you.

5 BY MR. FREDERICK:

6 Q Mr. Ortman, would you accept my
7 representation that MASN representatives have
8 testified in this litigation that they were
9 told by Comcast that the reason why Adelphia
10 systems in Roanoke-Lynchburg could not be
11 launched was because of a lack of bandwidth?

12 A I can't accept that.

13 Q You cannot accept that.

14 A I wasn't in the room when the
15 testimony was made. I take your word for it
16 that someone testified to it, but I was not
17 part of those conversations, and I don't see
18 a linkage between bandwidth and Adelphia.

19 Q Okay. If the MASN representatives
20 testified to that, that the Comcast people
21 told them that Comcast could not launch on
22 those former Adelphia systems for lack of

1 bandwidth, is it a fact that the Comcast
2 representatives who made those statements
3 would be incorrect?

4 A I said -- I'm not sure, to answer
5 your question. I've said that there's no
6 connection between Adelphia and bandwidth in
7 terms of exclusions, or inclusions.

8 Q And that's because, at the time,
9 in July of 2006, the Roanoke-Lynchburg former
10 Adelphia's had, in fact, been upgraded.
11 Correct?

12 A Many of them had been, yes.

13 Q And they were at 750 megahertz.
14 Correct?

15 A Some of them were.

16 Q And many of them were.

17 A Yes.

18 Q More than half of them were.

19 A Yes, about two-thirds, from what
20 we just talked about.

21 Q Okay. Is it a fact that the
22 Harrisburg system has been rebuilt?

1 A Yes, Harrisburg has been.

2 Q Is it a fact that the Harrisburg
3 system was rebuilt prior to 2006?

4 A It had been.

5 Q Is it a fact that the Harrisburg
6 system is at 750 megahertz, or better?

7 A Yes, it is.

8 Q Is it a fact that approximately
9 more than [REDACTED] of Comcast systems in the
10 Harrisburg DMA are more than 750 megahertz?

11 A Yes.

12 Q Is it a fact that the total number
13 of Comcast subscribers in the Harrisburg DMA
14 is approximately [REDACTED]?

15 A That sounds about right.

16 Q Okay. Is it true that it could
17 not have been the case that MASN was denied
18 carriage in Harrisburg because of a lack of
19 bandwidth?

20 A No, bandwidth was adequate in the
21 Harrisburg DMA.

22 Q And, in fact, that it was

1 sufficient bandwidth in August 2006 in
2 Harrisburg.

3 A Yes, there was.

4 Q Okay. And you don't have any idea
5 whether there are bandwidth constraints in the
6 Tri-Cities area. Correct?

7 A I have seen reports that suggest
8 that most of it is now 750.

9 Q And by most, can you give us an
10 approximate percentage of sufficient bandwidth
11 in the Tri-Cities area?

12 A Of our customers, I don't recall
13 that level of detail of the report that I
14 looked at. There were several systems. I
15 would say the majority, if not more.

16 Q Okay. More than 50 percent.

17 A Yes.

18 Q More than 75 percent?

19 A I don't recall.

20 Q Okay. Did Comcast agree to
21 purchase former Adelphia systems that were
22 part of a deal with Time Warner Cable?